

EXHIBIT D
RESTRICTIVE COVENANT
(ELLIOTT AVENUE)

CITY OF SEATTLE (THE CITY)

Former UNOCAL Seattle Marketing Terminal
Seattle, Washington

This declaration of Restrictive Covenant is made pursuant to RCW 70.105D.030(1)(f and g), and WAC 173-340-440, by THE CITY, its successors and assigns, and the Washington State Department of Ecology, its successors and assigns.

Legal Description:

Seattle Art Museum, King Co. Consent Decree No.:

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A remedial action occurred at the Property that is the subject of this Restrictive Covenant. The remedial action conducted at the Property is described in the following documents which are on file at Ecology’s Northwest Regional Office:

1. Final Supplemental RI for Upper Yard, Elliott Ave. and Offsite Area by Geo Engineers, June 28, 1996.
2. Remedy Selection Elliott Avenue, by GeoEngineers January 10, 1997.
3. Supplemental Characterization (Off Property Contamination & C₁₄ Testing) Elliott Avenue and Bay Street North of Seattle Marketing Terminal, Lower Yard, Seattle, WA. by Geo Engineers, January 6, 1997.
4. Health and Safety Information Notice for the City of Seattle, Property near Unocal’s Former Seattle Marketing Terminal, June 27, 1997. ***Revised November 24, 1998, by GeoEngineers.***
5. Site Remediation Progress Reports 1 through 66 (1988 –1999) by GeoEngineers.
6. Focused Supplemental Site Characterization Report, Prepared for The Trust for Public Land, Former Unocal Property, Seattle, WA By HART CROWSER, Project No. J-7018, September 30, 1999.
7. Supplemental Focused Feasibility Study Report, Prepared for The Trust for Public Land, Former Unocal Property, Seattle, WA By HART CROWSER, Project No. J-7018, September 30, 1999.

This Restrictive Covenant is required because the remedial action resulted in residual concentrations of TPH which exceed the Model Toxics Control Act (MTCA) Method A or B Cleanup Levels established under WAC Chapter 173-340 for soils beneath the Elliott Avenue right of way at depths of about 10 to 30 feet below ground surface. Petroleum hydrocarbon contamination in groundwater exceeds Method A cleanup levels established under WAC 173-340-740 (Enclosed Figure 9). There is viscous free product present beneath Elliott Ave. There is ongoing groundwater monitoring and free product removal from wells by hand bailing.

The City has an easement on real property (hereafter “Property”) in the County of King, State of Washington, that is subject to this Restrictive Covenant. The Property is legally described as follows: *(insert legal description)*. The City makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law, and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property.

Section 1. Any activity on the Property that may interfere with the cleanup or integrity of the remedial action, result in the release or exposure to the environment of the residual TPH contaminated soil that was contained or hazardous substance that remains on the Property as part of the remedial action, or creates a new exposure pathway is prohibited without prior written approval from Ecology; however, the City or any permittees, licensees or its contractors are not prohibited from performing utility, telecommunications and street maintenance and repair on or underneath the Property if such work complies with the approved Health and Safety Notice referenced in the documents section above (“Work”), which Health and Safety Notice shall be filed with this Restrictive Covenant and identified in the City’s flagging system. Some examples of activities that are subject to this Section in the capped area of the Site include: drilling, digging, placement of any objects or use of any equipment which deforms or stresses the surface beyond its load bearing capability, piercing the surface with a rod, spike or similar item, bulldozing or earthwork.

Section 2. Any activity on the Property that may interfere with the continued protection of human health and the environment is prohibited, except for the Work described in Section 1.

Section 3. Except as provided in Section 1, the City must give thirty (30) day advance written notice to Ecology of the City's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the City without adequate and complete provision for continued monitoring, operation and maintenance of the remedial action. If the City conveys any interest in the Property, it shall notify Ecology of the name, mailing address and telephone number of the person or persons who acquired the title, easement, lease, or other interest in the Property within fifteen (15) days of the transaction.

Section 4. Except as provided in Section 1, the City must restrict leases to uses and activities consistent with the Restrictive Covenant and notify all lessees of the restrictions on the use of the Property.

Section 5. Except as provided in Section 1, the City must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Restrictive Covenant. Ecology may approve any inconsistent use only after public notice and comment.

Section 6. Except as provided in Section 1, the City shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the remedial action, to take samples, to inspect remedial actions conducted at the Property, and to inspect records that are related to the remedial action.

Section 7. The City reserves the right under WAC 173-340-440 to record an instrument that provides that this Restrictive Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs.

